

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

JOHN F. DURAN
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-124
Case No. 71-1840

S.S.A. No.

KAISER STEEL CORPORATION
(Employer)

Employer Account No.

The employer appealed from Referee's Decision No. ONT-3832 which held that the claimant was not disqualified for benefits under section 1256 of the Unemployment Insurance Code; that the employer's reserve account was not relieved of benefit charges under section 1032 of the code; and, that the claimant had not been overpaid benefits in the amount of \$65 and was not liable for the repayment thereof under section 1375 of the code.

STATEMENT OF FACTS

The claimant worked for the employer for about 15 years ending October 29, 1970. The claimant first became an inspector for the employer in August 1968. In November 1968 he accepted a downgrade to laborer and remained in this position until May 1969 when he again became an inspector. The claimant worked as a laborer for one week in October 1969. He then worked as an inspector until October 24, 1970 at a final wage of \$3.65 an hour.

The claimant was placed on temporary layoff on October 24, 1970. On October 29, 1970 he was offered, pursuant to, and in accordance with, the collective bargaining agreement, the choice of an indefinite lay-off or a transfer to a laborer position at an hourly

wage of \$2.885. The claimant refused the transfer because of the substantial amount of the wage reduction—and because he thought he could find a better paying job elsewhere.

As of October 29, 1970, the claimant had not made himself aware of the condition of the labor market. In fact, the labor market was in a period of high unemployment. The claimant discovered this condition when he subsequently attempted to file applications for work and no employer would accept them. He had no job prospects when he refused the transfer to the above position. He had applied unsuccessfully for a job as an interpreter during the period of his temporary layoff.

As of the date of the referee hearing the claimant was working for the employer as a laborer at an hourly wage of \$2.885. He started this last period of employment on December 7, 1970.

The claimant's claim for benefits was effective October 25, 1970. He served a seven-day waiting period commencing on that date. He received \$65 in unemployment benefits for the week ending November 7, 1970. In filling out a card in connection with this claim the claimant answered "No" to the question of whether he had been offered any work for the week ending October 31, 1970. The Department has not considered the issue of whether this answer was a false statement.

REASONS FOR DECISION

Section 1256 of the code provides that an individual is disqualified for benefits and sections 1030 and 1032 of the code provide that an employer's reserve account may be relieved of benefit charges if the individual left his most recent work voluntarily and without good cause.

A claimant who has elected to give up employment rather than accept a reclassification or transfer to another position which the claimant is equipped to perform because of such matters as experience, training, or education, with the same employer must be deemed to have voluntarily left his work rather than to have refused an offer of new work. Since this claimant herein rejected an offer of transfer to such a

position, the matter becomes one of a voluntary leaving of work and the issue of good cause is before us.

Good cause for the voluntary leaving of work exists where the facts disclose a real, substantial and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action. (Appeals Board Decision No. P-B-27)

The following appears in 100 A. L. R. 2d 1057 at 1058:

"The rule generally applied . . . is that a substantial reduction in wages is regarded as 'good cause' or constitutes a compelling and necessitous reason for leaving employment so as to entitle claimant to unemployment compensation benefits."

Cases from Alabama, California (Bunny's Waffle Shop v. California Employment Commission (1944), 24 C. 2d 735, 151 P. 2d 224, which involved a 25 percent wage reduction), Louisiana, Pennsylvania, and Washington are annotated as support for this rule.

In Johnson, et al. v. State of California, et al. (1970), Court of Appeal, Second Appellate District, Division One (Civil No. 36540), an unreported decision, the court, citing the Bunny's Waffle Shop case, gives its approval of this rule in the following language:

"As a general rule, it has been held that a substantial reduction in wages is regarded as 'good cause' for leaving employment so as to entitle a claimant to unemployment compensation benefits."

We are in general agreement with this rule. Unless a person would become a nonproductive member of society (see Appeals Board Decision No. P-B-1), a person has good cause to leave his employment when he is confronted with the alternative of continuing employment at a sufficiently substantial reduction of pay or becoming unemployed.

The reduction in pay that the claimant was faced with in the instant case was from \$3.65 an hour to \$2.885 an hour. Since we cannot find that the claimant became a nonproductive member of society by choosing unemployment rather than accepting this reduction in pay, we find that this reduction in pay (20.96 percent) is sufficiently substantial, in and of itself, to conclude that the claimant had good cause to leave his work.

Since the claimant is not disqualified for benefits under section 1256 of the code, the overpayment must be cancelled.

Subdivision (a) of section 1257 of the code provides that an individual is disqualified for benefits if he wilfully made a false statement or representation or wilfully failed to report a material fact to obtain any unemployment compensation benefits.

In the instant case, the claimant did not tell the Department that he had an offer of continuing employment for the week ending October 31, 1970. The case is referred to the Department for a determination under subdivision (a) of section 1257 of the code regarding this statement.

DECISION

The decision of the referee is modified. The claimant is not disqualified for benefits under section 1256 of the code. The employer's reserve account is not relieved of benefit charges under section 1032 of the code. The overpayment is cancelled. The case is referred to the Department for a determination under subdivision (a) of section 1257 of the code.

Sacramento, California, January 20, 1972.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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